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IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 39 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH
and
Hon'ble MR.JUSTICE D.A.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

COMMISSIONER OF INCOME-TAX

Versus

VIMALBHAI RAMANBHAI FAMILY TRUST

Appearance:

1. INCOME TAX REFERENCE No. 39 of 1989
MR BB NAIK with MR MANISH R BHATT for Petitioner No. 1
SERVED BY RPAD - (N) for Respondent No. 1

CORAM : MR.JUSTICE M.S.SHAH
and
MR.JUSTICE D.A.MEHTA

Date of decision: 04/10/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE D.A.MEHTA)

The Income-tax Appellate Tribunal, Ahmedabad Bench "A" has referred the following three questions under Section 256(1) of the Income-tax Act, 1961 (hereinafter referred to as "the Act") for the opinion of this Court :-

"(1) Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that the shares of the beneficiaries were determinate ?

(2) Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in coming to the conclusion that the beneficiaries had advanced loans to the trust was entitled to deduction in respect of payment of interest to beneficiaries ?

(3) Whether on the facts and in the circumstances of the case, the Tribunal was right in law in coming to the conclusion that the provisions of section 164 of the Act were not attracted ?"

2. We have heard Mr BB Naik for the applicant-revenue. Though served, none appears for the respondent-assessee.

3. Our attention was drawn to the decision of this Court in Income-tax Reference No. 129 of 1984 dated 11.11.1998 in case of the same assessee. From the said decision, it appears that for assessment year 1978-79, an identical controversy was brought before the Court against the Tribunal's decision holding that the shares of the beneficiaries of the assessee-trust were determinate. On interpretation of trust deed, the Bench has held that the Tribunal was justified in law in holding that the shares of the beneficiaries were determinate and that the trustees were obliged to distribute the income of interest.

4. Following the aforesaid decision in the assessee's own case, we hold that for the assessment year under reference, the Tribunal was right in holding that the assessee-trust was a determinate trust wherein the shares of the beneficiaries were ascertained. Question No.1 is, therefore, answered in the affirmative i.e. in favour of the assessee and against the revenue.

5. Question No. 2 is consequential to our finding as regards question No. 1. Once the conclusion has been arrived at, that the beneficiaries had determinate shares in the assessee-trust and that the trustees were obliged to distribute the income, interest paid by the trust on the loans advanced by the beneficiaries is allowable as a deduction and the Tribunal had rightly held it to be so. The second question is, therefore, answered in the affirmative i.e. in favour of the assessee and against the revenue.

6. In so far as the third question is concerned, once it is held that the shares of the beneficiaries are determinate, provisions of Section 164 of the Act are not attracted and hence the Tribunal was justified in law in holding that the provisions of Section 161 of the Act would be applicable and not the provisions of Section 164 of the Act. The third question is accordingly answered in the affirmative i.e. in favour of the assessee and against the revenue.

7. The reference is disposed of accordingly with no order as to costs.

(M.S. Shah, J.)

(D.A. Mehta, J.)

sundar/-